

## NEBRASKA ADMINISTRATIVE CODE

### Title 48 - Department of Banking and Finance

#### Chapter 7 - INVESTMENT ADVISERS

##### 001    GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to investment advisers is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards and policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.

002    APPLICATION. The application for initial registration as an investment adviser pursuant to Section 8-1103(3) of the Act shall be filed as directed in Section 005, below, and shall contain the following information:

002.01 Form ADV, Uniform Application for Investment Adviser Registration, 17 C.F.R. 279.1, together with all applicable schedules and exhibits specified therein, complete, accurate and current;

002.02 Form IAR for designation of investment adviser representatives to be registered in Nebraska;

002.03 A current and correct copy of the firm's articles of incorporation, partnership or organization, and any amendments thereto, if applicable;

002.04 A corporate resolution (Form U-2A), if applicable;

002.05 A completed "Affidavit of Investment Advisory Activity in Nebraska";

002.06 Financial statements as required by Section 009, below;

002.07 Specimen contracts or agreements relating to Nebraska clients;

002.08 Promotional or disclosure literature to be furnished or disseminated to any client or prospective client in Nebraska;

002.09 IA fee in the amount of two hundred dollars (\$200; and

002.10 Any other information the Director may require.

003    RENEWAL.

003.01 An investment adviser's registration automatically expires annually on December 31. An investment adviser's registration must be renewed on or prior to that date.

003.02 An application for renewal of registration as an investment adviser pursuant to Section 8-1103(5) of the Act shall be filed annually as directed in Section 005, below, and shall contain the following information:

003.02A Form ADV, together with all applicable schedules and exhibits specified therein, complete, accurate and current;

003.02B Form IAR for designation of investment adviser representatives to be registered in Nebraska;

003.02C Financial statements as required by Section 009 below;

003.02D Specimen contracts or agreements relating to Nebraska clients;

003.02E Promotional or disclosure literature to be furnished or disseminated to any client or prospective client in Nebraska;

003.02F A fee in the amount of two hundred dollars (\$200); and

003.02G Any other information the Director may require.

004    WITHDRAWAL. An application for withdrawal of registration as an investment adviser pursuant to Section 8-1103(9)(d) of the Act shall be filed on Form ADV-W, Notice of Withdrawal from Registration as Investment Adviser, 17 C.F.R. 279.2, as directed in Section 005 below.

005    FORMS SUBMISSION.

005.01 All investment adviser applications, amendments, and fees required to be filed with the Director pursuant to the rules promulgated under the Act, shall be filed electronically with , and transmitted to, the Investment Advisers Registration Depository ("IARD"). All other documents required by this Rule shall be filed directly with the Director.

005.01A An investment adviser registered pursuant to the Act shall transition their registration on to the IARD no later than December 1, 2003.

005.02 When a signature or signatures are required by the particular instructions of any filing, forms filed directly with the Director shall contain a manual signature.

005.03 With respect to any document filed electronically through IARD, when a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

005.04 A form submitted through the IARD shall be deemed filed with the Department when the record is transmitted to the Department for review.

006    SUPERVISION. An investment adviser is ultimately responsible for the acts of its investment adviser representatives and other associated persons and must maintain reasonable supervision and control over such persons at all times.

007    AMENDMENT AND CORRECTION OF DOCUMENTS. If a material change in operations occurs, or if the information contained in any document filed with the Director is or becomes inaccurate or incomplete in any material respect, the investment adviser shall promptly file a correcting amendment on the appropriate form within the time period specified in the instructions to that form. Such amendments and corrections shall be filed as directed in Section 005, above.

008 FINANCIAL REQUIREMENTS.

008.01 An investment adviser registered or required to be registered under the Act shall:

008.01A Maintain at all times a minimum net capital of \$25,000; or

008.01B Post a surety bond on a form acceptable to the Director in the amount of \$25,000.

008.02 Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act shall notify the Director if such investment adviser's net capital is less than the minimum required by the close of business on the next business day. After transmitting such notice, the investment adviser shall file a report with the Director of its financial condition by the close of business on the next business day. The report shall include:

008.02A A trial balance of all ledger accounts;

008.02B A statement of all client funds or securities which are not segregated;

008.02C A computation of the aggregate amount of debit balances in the client ledger;

008.02D A statement as to the number of client accounts; and

008.02E Any other information the Director may require.

008.03 For purposes of this Section, "net capital" shall mean total assets less total liabilities.

008.03A In determining net capital, the following items shall not be included as assets:

008.03A1 Prepaid expenses (except items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights,

unamortized debt discount and expense, and all other assets of intangible nature;

008.03A2 Home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual;

008.03A3 Advances or loans to stockholders or officers in the case of a corporation;

008.03A4 Advances or loans to partners in the case of a partnership; and

008.03A5 Advances or loans to members in the case of a limited liability company.

008.03B The Director may require that a current appraisal be submitted in order to establish the worth of any asset.

008.04 This Section shall not apply to an investment adviser whose principal place of business is not located in this state provided:

008.04A Such investment adviser is registered in the state in which its principal place of business is located; and

008.04B Such investment adviser is in compliance with the minimum financial requirements established by the state in which its principal place of business is located.

008.04C For purposes of this Section, principal place of business means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

## 009 FINANCIAL REPORTING REQUIREMENTS.

009.01 Every registered investment adviser who has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall file with the Director audited financial statements showing the assets, liabilities and net capital of the investment adviser as of the end of the investment adviser's fiscal year.

009.01A The financial statements must be:

009.01A1 Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

009.01A2 Audited by an independent public accountant or an independent certified public accountant; and

009.01A3 Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

009.01B If the date of the audited financial statements is not within 90 days of the date of the initial application or the expiration of the current registration, the investment adviser must also submit a financial statement showing the assets, liabilities and net capital of the investment adviser as of a date within 90 days of the date of the initial application or within 90 days of the expiration of the current registration, as the case may be, and signed by an officer, director, partner or member, of the investment adviser, or by the person who prepared the statement, attesting that the statement is true and correct.

009.02 All other investment advisers registered or required to be registered shall file with the Director financial statements showing the assets, liabilities and net capital of the investment adviser, prepared in accordance with accepted accounting principles. The financial statements need not be audited but must be signed by the investment adviser, by an officer, director, partner, or member of the investment adviser, or by the person who prepared the statement attesting that the statement is true and accurate, as of a date within 90 days of the date of initial application, or within 90 days of the expiration of a current registration, as the case may be.

009.03 The financial statements required by this Section shall be filed as part of the investment adviser's initial or renewal application.



009.04 This Section shall not apply to an investment adviser whose principal place of business is not located in this state provided:

009.04A Such investment adviser is registered in the state in which its principal place of business is located; and

009.04B Such investment adviser is in compliance with the minimum financial requirements established by the state in which its principal place of business is located, if any.

009.04C For purposes of this Section, principal place of business means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

## 010 INVESTMENT ADVISER BROCHURE.

010.01 Unless otherwise provided, an investment adviser, registered or required to be registered pursuant to Section 8-1103(2) of the Act, shall furnish each advisory client and prospective advisory client with a written disclosure statement. The disclosure statement may be a copy of Part II of its Form ADV or written documents containing at least the information then required by Part II of Form ADV, or such other information as the Director may require.

010.02 Except as provided in Section 010.02C below, an investment adviser shall deliver the written disclosure statement to an advisory client or prospective advisory client as follows:

010.02A Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client; or

010.02B At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

010.02C The disclosure statement need not be delivered in connection with entering into a contract for impersonal advisory services.

010.03 Except as provided in Section 010.03A below, an investment adviser shall annually deliver, or offer in writing to deliver upon written request, the written disclosure statement to each of its advisory clients without charge.

010.03A The disclosure statement need not be delivered or offered to advisory clients receiving services solely pursuant a contract for impersonal advisory services requiring a payment of less than \$200.

010.03B With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200 or more, an offer of the type specified in this Section shall also be made at the time of entering into an advisory contract.

010.03C The investment adviser shall deliver the written statement to the client within seven days of receiving a written request made pursuant to an offer required by this Section.

010.04 An investment adviser which renders substantially different types of investment advisory services to different advisory clients may omit information required by Part II of Form ADV from the statement furnished to an advisory client or prospective advisory client, if the omitted information applies only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

010.05 Nothing in Section 010 shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by Section 010.

010.06 For purposes of this Section:

010.06A Contract for impersonal advisory services means any contract relating solely to the provision of investment advisory services:

010.06A1 By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

010.06A2 Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

010.06A3 Any combination of the foregoing services.

010.06B Entering into, in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

011 ASSIGNMENTS. For purposes of Section 8-1102(3)(b) of the Act, a transaction which does not result in a change of actual control or management of an investment adviser is not an assignment.

012 REGISTRATION OF SUCCESSOR TO REGISTERED INVESTMENT ADVISER. In the event that an investment adviser succeeds to and continues the business of an investment adviser registered pursuant to Section 8-1103 of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within thirty (30) days after such succession, files an application for registration on Form ADV, and the predecessor files a notice of withdrawal from registration on Form ADV-W.

012.01 The registration of the predecessor investment adviser will cease to be effective as the registration of the successor investment adviser forty-five (45) days after the application for registration on Form ADV is filed by such successor.

012.02 Notwithstanding any other provision of this Section:

012.02A A Form ADV filed by an investment adviser partnership which is not registered when such form is filed and which succeeds to and continues the business of a predecessor partnership registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners.

012.02B A Form ADV filed by an investment adviser corporation which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's state of incorporation and the amendment is filed to reflect that change.

012.02C A Form ADV filed by an investment adviser corporation, partnership, sole proprietorship or other entity which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation, partnership, sole proprietorship or other entity registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's form of organization and the amendment is filed to reflect that change.

013 DISHONEST OR UNETHICAL BUSINESS PRACTICES. The conduct set forth in 48 NAC 12.005 shall constitute "an act, practice or course of business which operates, or would operate, as a fraud or deceit upon another person" by an investment adviser for purposes of Section 8-1102(2)(b) of the Act and "dishonest or unethical business practices" by an investment adviser for purposes of Section 8-1102(2)(d) and Section 8-1103(9)(a)(vii) of the Act. The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated in 48 NAC 12.005 may also be deemed fraudulent and dishonest.